

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Subsection (b)(91.1) of Section 7.50  
Title 14, California Code of Regulations  
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: February 2, 2007
- II. Date of Amended Initial Statement of Reasons: March 15, 2007
- III. Date of Pre-Adoption Statement of Reasons: April 9, 2007
- IV. Date of Final Statement of Reasons: May 4, 2007
- V. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: February 2, 2007  
Location: Monterey, CA
  - (b) Discussion Hearing: Date: March 2, 2007  
Location: Arcata, CA
  - (c) Discussion Hearing: Date: April 13, 2007  
Location: Bodega Bay, CA
  - (d) Adoption Hearing: Date: May 4, 2007  
Location: San Diego, CA

VI. Update:

The bolded text in the Updated Informative Digest replaces the original text of Pre-Adoption Statement of Reasons to eliminate out-dated text and clarify the final recommendations of the PFMC and the Department.

Minor changes have been made to clarify the regulatory language of the Pre-adoption Statement of Reasons.

The Fish and Game Commission adopted the proposed changes to the regulations at its May 4, 2007 meeting.

VII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

(1) Steve Paine, Willow Creek Community Services District, written letter dated February 23, 2007:

- a. Support positive river allocation to encourage the economic health of the communities.
- b. Requested fishing opportunities in September and October.

Response:

- a. Comment noted.
- b. The fishery is monitored by a quota system and the fall fishing opportunities are dependent on previous fishing effort and the availability of the quota.

(2) Jim Martin, Recreational Fishing Alliance, oral comments at February 2, 2007 and March 2, 2007 Commission meetings:

- a. They support proposed regulation changes for the Klamath River.

Response:

- a. Support noted.

(3) Ed Duggan, Trinity Fishery Guide and Trinity River Restoration member, written letter dated March 1, 2007 and oral comments at March 2, 2007 Commission meeting:

- a. No river allocation in 2006 had large negative economic impact on the river communities.
- b. He requested a 3 fish daily bag limit with 2 adults.
- c. The commercial fall "credit card" fishery should be charged to the commercial fishery.
- d. He does not want the river sport fishery set by the Yurok Tribal fishery for spring Chinook and wants set time periods.
- e. He requests 50 to 100% marking of all hatchery fish.
- f. Requested the Commission provide the PFMC with a river sport allocation recommendation.

Response:

- a. Comment on last year's season noted.
- b. The Commission's adopted regulations support his request.
- c. This comment is not concerning the subject matter of these regulations and cannot therefore be addressed in this particular regulatory procedure.
- d. The Department uses set dates to differentiate between spring and fall Chinook and not results of tribal fisheries, but the duration of fishing opportunity is related to available quota levels.

- e. See Response 3c.
- f. Instead of setting a specific inriver allocation percentage, the Commission directed that all surplus fish not utilized in the ocean be allocated to the Klamath and Trinity river sport fishery.

(4) Rich Maxwell, Shasta County Sportsmen, oral comments at March 2, 2007 Commission meeting:

- a. Requested retention of brown and brook trout in all catch and release waters statewide similar to Klamath River regulations.

Response:

- a. See Response 3c.

(5) Dave Bitts, Commercial Salmon Troller, oral comments at March 2, 2007 Commission meeting:

- a. He supports proposed regulation changes for the Klamath River.

Response:

- a. See Response 2a.

(6) Bill Tripp, Karuk Tribal Department of Natural Resources, Shasta County Sportsmen, e-mail dated March 15, 2007:

- a. Provided overview of tribal fisheries program and tribal ordinances relevant to Karuk Traditional Harvest Management Timing from their Draft Karuk Tribal Eco-Cultural Resource Management Plan currently in development.

Response:

- a. See Response 3c.

(7) Vance Cooke, business owner in Weaverville, California, e-mail dated March 19, 2007:

- a. He expressed concern that last year's quota had a negative effect on the many local businesses.
- b. He supports the proposed PFMC regulation changes for the Klamath River.

Response:

- a. See Response 3a.
- b. The Commission's regulations conform to PFMC's preferred option.

(8) Zeke Grader, Pacific Coast Federation Fisherman's Association, oral comments at April 13, 2007 Commission meeting:

- a. They support proposed regulation changes for the Klamath River.
- b. They support sending a letter to the Department of Fish and Game, National Marine Fisheries Service, and US Fish and Wildlife Service asking them to develop a contingency plan to deal with the possibility of a future fish kill on the Klamath River.

Response:

- a. See Response 2a.
- b. See Response 3c.

VIII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:

California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

IX. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

X. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The use of more liberal regulations for bag limits, possession limits and fishing methods. More liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding the allowable harvest could be damaging to the Klamath River System Chinook salmon stocks.

(b) No Change Alternative:

The change is necessary to continue appropriate harvest rates and an equitable distribution of the harvestable surplus.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

XI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulations are projected have an unknown impact on the net revenues to businesses servicing sport fishermen. This is not likely to affect the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## Updated Informative Digest/Policy Statement Overview

The Klamath River System, which consists of the Klamath and Trinity river basins, is managed through a cooperative system of State, Federal, and tribal management agencies. Salmonid regulations developed through this system are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport and commercial, river sport, and tribal fisheries.

The Klamath River Fall Chinook (KRFC) salmon harvest and spawning escapement levels are established by the *Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coast of Washington, Oregon, and California Commencing in 1978* adopted by the Pacific Fishery Management Council (PFMC) for the U.S. Department of Commerce. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The PFMC is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals. The Department of Fish and Game Director is authorized by Fish and Game Code to conform commercial salmon fishing regulations in State waters to federal fishery management goals.

The Klamath River System also supports Native American subsistence and occasional tribal commercial fisheries which are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok tribes.

**The bolded text below replaces the original text of Updated Informative Digest in the Pre-Adoption Statement of Reasons to eliminate out-dated text and clarify the final recommendations of the PFMC and the Department.**

### **River Sport Fishery Management:**

Currently subsection (b)(91.1) of Section 7.50, Title 14, California Code of Regulations, regulates the allowable Chinook salmon sport harvest in the Klamath River System by an annual basin quota divided into sub areas and the distribution of the catch by seasons, and daily and weekly bag and possession limits.

The 2006 basin quota for the Klamath River System allowable sport harvest was zero adult KRFC salmon. **A 300 adult KRFC salmon catch and release allowance was instituted to enable a sub-adult KRFC salmon, steelhead and trout fishery.**

**Present regulations have no adult Chinook salmon retention in specific areas after August 15 in the Lower Klamath River and after April 1 in the Upper Klamath and Trinity rivers.** The trout daily bag limit is 1 hatchery trout or 1 hatchery steelhead, and 1 brown trout. The salmon daily bag limit is 3 Chinook salmon, of which no more than 1 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed. The possession limits are:

1. No more than 2 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed and
2. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

The Department **proposed** the following changes to current regulations.

**Basin Quota Management:**

The annual Klamath River basin quota will be split evenly, with 50% of the quota allocated to the Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the Klamath River System upstream of the Highway 96 Bridge at Weitchpec, including the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon in the upper and lower Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River basin quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River basin quota will be met. This closure is designed to prevent excessive take near the mouth when fish are concentrated in this small area and provide equitable distribution of KRFC salmon with upper river anglers.

The area upstream of the Highway 96 Bridge at Weitchpec is further divided into three sub quotas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River from Old Lewiston Bridge to Cedar Flat.

These sub area divisions are based upon historical angler effort distributions and ensure equitable harvest of adult KRFC salmon in the upper Klamath and Trinity rivers.

The quota system requires the Department to monitor angler harvest of adult KRFC salmon in each sub-quota area. All sub-quota areas will be monitored on a real-time basis except for the following area:



Trinity River above Willow Creek: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Trinity River above Willow Creek for the 2007 season. The Department has reviewed all available Trinity River Chinook salmon harvest and run-timing data for this area. Based on this review, the Department developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the KRFC salmon harvested in the lower Klamath and Trinity rivers and KRFC salmon harvested in the upper Trinity River in past years. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

**The Department proposed two** exceptions to the harvest quota in the basin. Both apply to terminal fisheries in the vicinities of Iron Gate Hatchery and Trinity River Hatchery. Chinook salmon over 22 inches total length may be retained from 3,500 feet downstream of Iron Gate Dam to the Interstate 5 bridge when the Department determines that the adult fall-run Chinook salmon spawning escapement at Iron Gate Hatchery exceeds 8,000 fish. Chinook salmon over 22 inches total length may be retained downstream of the Old Lewiston Bridge to the mouth of Indian Creek when the Department determines that the adult fall-run Chinook salmon spawning escapement at Trinity River Hatchery exceeds 4,800 fish.

These exceptions are intended to provide angling opportunity after hatchery mitigation egg-take goals have been met. Both reaches are located in areas where natural spawning is limited and harvest will be composed primarily of excess hatchery stock.

**Daily Bag Limit and Possession Limit:**

No retention of adult Chinook salmon **was** proposed for the following areas, once the sub quota has been met:

1. Klamath River from Iron Gate Dam to Weitchpec from September 1 through November 30,
2. Klamath River from Weitchpec to the mouth of the Klamath River from August 15 through November 30,
3. Trinity River from Old Lewiston Bridge to Cedar Flat from September 15 through November 30,
4. Trinity River from Hawkins Bar to the mouth of the South Fork Trinity River from September 1 through November 30, and
5. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from September 1 through November 30.

These staggered openings and closures are designed to meet natural and hatchery escapement needs for KRFC salmon stocks, while providing equitable harvest opportunities under a quota system for all river areas.

The following measures **were** proposed regardless of the quota level:

No adult Chinook salmon may be retained in the following areas:

1. Klamath River from Iron Gate Dam to Weitchpec from April 1 through August 31, and
2. Trinity River from the South Fork Trinity River mouth to the confluence with the Klamath River from April 1 through August 31.

These closures **provide** protection for naturally produced Spring Chinook salmon while providing sport harvest opportunity on the hatchery component of the Spring Chinook salmon in the lower Klamath River.

No fish may be retained on the Trinity River from Cedar Flat to Hawkins Bar from September 1 through November 30. This complete closure is designed to protect migrating salmon. **Two impediments in this area to salmon migration, Gray's Falls and Burnt Ranch Falls, cause salmon to accumulate in this area at some flow levels, where they are excessively vulnerable to take by illegal methods.**

**The Department recommended the Commission consider a daily bag limit of 3 Chinook salmon, of which no more than 0-2 may be over 22 inches total length when the take of salmon over 22 inches is allowed and proposed the following possession limits:**

1. No more than 0-4 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed.
2. No more than 12 Chinook salmon may be possessed, of which no more than 0-4 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

Non-native brown trout have become well established in the Klamath River System, particularly in the Trinity River Basin. Brown trout are highly piscivorous and prey upon juvenile Chinook salmon, coho salmon and steelhead trout. **The Department proposed increasing the brown trout bag limit up to five fish per day with 10 fish in possession.** This proposed change will reduce predation on juvenile salmon and steelhead and align these regulations with statewide regulations.

The name Trinity River South Fork **was** proposed to be changed to South Fork Trinity River to reflect the name used on U.S. Geologic Survey maps. Other minor changes **were** proposed to improve the clarity and consistency of the regulations.

The final Pacific Fishery Management Council (PFMC) recommendation regarding the 2007 California Klamath River sport fishing adult quota was made on April 6, 2007 in

Seattle, Washington. The PFMC recommended a 2007 Klamath River Basin quota of 10,600 Klamath River Fall Chinook salmon over 22 inches total length. The Department supports the PFMC recommendation.

In response to the final PFMC recommendation and public requests, the Department **recommended** the Commission adopt the following brown trout and Chinook salmon daily bag limits and possession limits.

The proposed daily bag limit for brown trout is 5 fish per day with 10 fish in possession. Chinook salmon are proposed to have a daily bag limit of 3 fish of which no more than 2 may be over 22 inches total length when the take of salmon over 22 inches is allowed. The proposed Chinook salmon possession limits are:

1. No more than 4 Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed.
2. No more than 12 Chinook salmon may be possessed, of which no more than 4 may be over 22 inches total length when the take of salmon over 22 inches total length is allowed.

**The Fish and Game Commission adopted the proposed changes to the regulations at its May 4, 2007 meeting. Other minor changes have been made to clarify the regulations.**

**Addendum to Final Statement of Reasons  
Amend Section 7.50(b)(91.1), Title 14, CCR**

The regulatory text has been revised for consistency with the currently effective regulatory language adopted as an emergency and operative March 21, 2007 (see History Note 106 to section 7.50(b)(91.1). In addition, a minor change has been made for clarity in section 7.50(b)(91.1)(C)2.c., changing “fish” to “brown trout”.

The above-referenced emergency adopted text and the rulemaking action pursuant thereto, filed with the Office of Administrative Law (OAL File No. 07-0314-07E), is incorporated by reference into this rulemaking action, and this rulemaking action serves as the certificate of compliance for the emergency rulemaking action

Supplement to Section VII. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Action and Reasons for Rejecting Those Considerations:

- (3) Ed Duggan, Trinity Fishery Guide and Trinity River Restoration member, written letter dated March 1, 2007 and oral comments at March 2, 2007 Commission meeting:
- a. No river allocation in 2006 had large negative economic impact on the river communities.
  - b. He requested a 3 fish daily bag limit with 2 adults.
  - c. The commercial fall “credit card” fishery should be charged to the commercial fishery.
  - d. He does not want the river sport fishery set by the Yurok Tribal fishery for spring Chinook and wants set time periods.
  - e. He requests 50 to 100% marking of all hatchery fish.
  - f. Requested the Commission provide the PFMC with a river sport allocation recommendation.
  - g. **He provides copies of his notes from a meeting he attended in Arcata on 2/28/07. Using the estimated number of available KRFC, he has provided some possible allocation numbers for the upper and lower Klamath river segments. He then summarizes that in recent years the allocation has been 12 to 17%, with an average of 15%.**
  - h. **He requests a 7-day possession limit of 4 adult salmon**
  - i. **He requests the Commission consider changing the 50/50 allocation split between upper and lower river areas.**

Response:

- a. Comment on last year’s season noted.
- b. The Commission’s adopted regulations support his request.
- c. This comment is not concerning the subject matter of these regulations and cannot therefore be addressed in this particular regulatory procedure.
- d. The Department uses set dates to differentiate between spring and fall Chinook and not results of tribal fisheries, but the duration of fishing opportunity is related to available quota levels.
- e. See Response 3c.
- f. Instead of setting a specific inriver allocation percentage, the

Commission directed that all surplus fish not utilized in the ocean be allocated to the Klamath and Trinity river sport fishery.

- g. Comments noted**
- h. The Commission adopted a 7-day possession limit of 4 adult salmon**
- i. The 50/50 allocation split was developed after extensive public input in previous years to ensure adequate sharing between all rivers areas. There is no additional data to support changing the split at this time.**

(6) Bill Tripp, Karuk Tribal Department of Natural Resources, Shasta County Sportsmen, e-mail dated March 15, 2007:

- a. Provided overview of tribal fisheries program and tribal ordinances relevant to Karuk Traditional Harvest Management Timing from their Draft Karuk Tribal Eco-Cultural Resource Management Plan currently in development.**

**Response:**

- a. This comment concerns tribal harvest practices and not sport fishery regulations and cannot therefore be addressed in this particular regulatory procedure.**